IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.135 OF 1989

The State of Maharashtra ...Appellant

Vs.

Mohamad Makbul Mohamad Ismile ...Respondent

Mr.D.S.Mhaispurkar A.P.P.
Mr.T.E.Mane for Respondent

CORAM: SMT.RANJANA DESAI &
A.S.OKA,JJ.
DATE : OCTOBER 18, 2004.

ORAL JUDGMENT : **(PER ABHAY S.OKA,J.)**

1. By this Appeal against acquittal, the State of Maharshtra has taken exception to the Judgment and Order dated 31st October 1988 passed by the learned Judicial Magistrate First Class, Madha, District Solapur by which the Respondent-accused was acquitted of the offence punishable under Section 304-A of the Indian Penal Code.

2. The Respondent-accused is the driver of Truck No.ABT 1202. On 3rd June 1986 at 10.00 a.m. the deceased Sahebrao Changdeo and Mahadeo Changdeo Sawant were travelling by a motor cycle bearing the CND 5417 on national highway No.9. When the motor cycle was near the bus stop of Telangwadi, Taluka Madha, District Solapur, the Respondent who was driving the truck in a rash and negligent manner dashed

against the said motor cycle. As a result of injuries sustained in the accident, both the persons travelling on motor cycle died. The case of the prosecution is that the Respondent by doing a rash and negligent act not amounting to culpable homicide has committed an offence punishable under Section 304 A of the Indian Penal Code. By the impugned Judgment and Order the learned Judicial Magistrate acquitted the Respondent of the offence punishable under Section 304-A of Indian Penal Code.

3. Shri Mhaispurkar learned A.P.P. for the State submitted that there was no reason to discard the testimony of P.W.No.1 Vishwasrao Dattatraya Kachare and P.W.No.5 Navnath Wagag who were eye witnesses to the incident. He submitted that before the accident the motor cycle was ahead of the truck driven by the Respondent. While attempting to take turn the driver of the motor cycle had given signal by hand. Ignoring the signal given by the driver of the motor cycle the Respondent drove his truck in rash and negligent manner and dashed against the motor cycle thereby causing serious injuries to both the persons on the motor cycle which resulted in their death. He submitted that if the evidence of all the witnesses is considered, guilt of the Respondent was established.

4. Shri Mane the learned Counsel appearing for the Respondent submitted that the learned Magistrate has recorded

cogent reasons for discarding the evidence on record. He submitted that the accident took place due to negligence on the part of the driver of the motor cycle and there is no evidence against the Respondent. He, therefore, submitted that no interference is required in an Appeal against the acquittal.

5. We have considered the rival submissions. At the outset, it is to be noted that the prosecution has not placed on record any map showing the site of the accident. Considering the nature of the case made out by the prosecution, production of the map was absolutely essential with a view to understand the topography and location of the road near the site of the accident. The learned Magistrate has rightly criticised the Investigating Officer for not drawing a map or for not taking photographs of the scene of occurrence. In absence of any sketch or map of the spot of incident, we found it difficult to appreciate and understand the evidence led by the prosecution.

6. P.W.No.1 and P.W.no.5 are the only eye witnesses. P.W.No.1 Vishwas stated that the motor cycle of the deceased, a bus of the State Road Transport Corporation and the truck were coming from the direction of Pune. There is a road for approaching the village Telangwadi from the highway. He stated that the driver of the motor cycle had given a signal by his hand for taking a right turn. He stated that S.T.Bus

behind the motor cycle stopped at the bus stop and the truck driven by the Respondent which was behind the bus gave a dash to the motor cycle. P.W.No.5 Navnath also deposed that the accident took place when the motor cycle was turning towards village Telangwadi. He claims to be working by the side of Highway at a distance of 200 feet away on the western side of S.T.Bus stop of Telangwadi at the time of accident.

7. Except the aforesaid two witnesses there are no eye witnesses. It is pertinent to note here that both the witnesses have not deposed that the Respondent was driving the truck in rash and negligent manner or in a very high speed. The case of both the witnesses is that the motor cycle was taking a right turn at the time of the accident. According the said witnesses there was a S.T.Bus ahead of the truck and the incident occurred after the S.T.Bus stopped on the left side of the road near the Bus Stop. If this is the only evidence which is brought on record, it is very difficult to record a finding that the Respondent was driving the truck in rash and negligent manner. This is not the case where any negligence on the part of the Respondent is established on evidence.

8. Perusal of the Judgment and Order of the Trial Court shows that the entire evidence on record has been considered by the Trial Court. The Trial Court has accepted the case of the Respondent that the offence was not established and it

was purely an accident which has taken place while the motor cycle was taking a right turn. After examining the evidence on record, it is impossible to come to the conclusion that there was a rash or negligent driving on the part of the Respondent. No other view is possible to be taken on the basis of the evidence on record.

9. Hence, there is no merit in the Appeal. The Appeal is dismissed with no order as to costs.

(SMT.RANJANA DESAI,J.)

(ABHAY S.OKA,J.)